

THE ENVIRONMENTAL COOPERATION PILOT PROGRAM

1997 Wisconsin Act 27 created the Environmental Cooperation Pilot Program with the goal of encouraging innovation and experimentation in environmental regulation, while maintaining at least the current level of environmental protection. To do that, the program authorizes the Department of Natural Resources (DNR) to establish up to ten cooperative agreements with owners or operators of facilities covered by environmental regulatory licenses or permits, such as water pollution discharge elimination permits or air pollution control permits. More than one facility may be covered under an agreement, if they have the same owner or operator. In these agreements, which last five years and can be renewed for an additional five years, DNR agrees to give facilities greater flexibility in meeting federal and state environmental regulations and reduce administrative requirements. In return, facilities must evaluate their entire effect on the environment, establish goals to reduce their overall level of pollution, and measure their progress toward those goals. Cooperative agreements will replace and supercede provisions of any DNR licenses or permits for the term of the agreement. However, the owner or operator will still be required to pay the same fees under the cooperative agreement as under superseded licenses or permits.

Statutes and DNR procedures determine the process by which DNR and participating facilities develop cooperative agreements. First, a facility owner or operator sends DNR a letter of intent and application, indicating plans to negotiate a cooperative agreement. The facility then submits to DNR a draft agreement, or initial proposal for items to be included in the cooperative agreement. DNR staff develop a counter-proposal that indicates points of agreement and areas that require greater explanation or negotiation. At this point, formal negotiations begin between DNR and the participating facility, the product of which is a signed cooperative agreement.

Terms of the cooperative agreements are specific to each participating facility. For example, DNR can grant one or all of the following:

- reduced monitoring, record-keeping, and reporting requirements;
- removal of requirements to screen for pollutants that have not appeared in earlier analyses;
- creation of facility-wide permits for some waste or pollution sources; and
- expedited decision-making from DNR and the U.S. Environmental Protection Agency (EPA) regarding new permits or variances to existing permits.

In addition, DNR is prohibited from bringing civil action against participating facilities for civil violations disclosed by the facility that do not present an imminent threat to public health or the environment and are corrected within 90 days. However, the Department retains its authority to bring civil and criminal charges against facilities if it discovers serious violations during routine enforcement reviews. The program also requires participating facilities to engage in

public involvement activities. Specifically, they are required to establish “interested persons groups” composed of local citizens who review both the design of their environmental management systems and progress toward meeting waste reduction goals. DNR also must provide for public comment on any issuance, modification, or revocation of a cooperative agreement.

Finally, the legislation requires annual progress reports to the Legislature by the DNR, and for the Legislative Audit Bureau to monitor the program.

Memorandum of Agreement between DNR and EPA

DNR staff indicate that because the EPA did not provide its formal support to the program during the first one and one-half years, progress on establishing agreements was impeded. Facility owners and operators were concerned that EPA might not recognize the permit variances granted by DNR, resulting in additional rather than reduced work required to follow both the federal and state rules. Moreover, concern was expressed that citizens could bring legal action against firms for not following federal regulations.

However, on March 25, 1999, EPA and DNR signed the nation’s first federal-state agreement allowing development of an experimental regulatory system. The principal points of the agreement include:

- assurance to facilities that DNR’s cooperative environmental agreements are allowed and supported by EPA;
- creation of an Interagency Innovations Team, composed of DNR and EPA staff, to coordinate regulatory change and enforcement decisions for each participating facility; and
- assurance to EPA that Wisconsin will continue to provide adequate enforcement against facilities with serious violations.

The memorandum of agreement outlines the process that the interagency team will follow when implementing cooperative agreements. First, both DNR and EPA will review draft agreements and agree upon their strengths and challenges. The EPA will have four weeks to react to draft agreements and identify any potential issues that need to be resolved. Second, DNR will negotiate a cooperative environmental agreement with interested facilities. While EPA has no role in the actual negotiations, the interagency team may be used to identify mechanisms that can carry out specific innovations requested by facilities. Third, DNR and EPA will work together as issues arise through the implementation process of individual cooperative agreements and the pilot project in general. Finally, the interagency team, along with other interested parties, will develop criteria with which to evaluate the program.

In addition, the memorandum of agreement clarifies the steps that DNR and EPA will take to ensure that any changes to state or federal environmental requirements are legally binding and enforceable. If a facility requests modifications to the state environmental program, such as those that govern noise, odors, or airborne chemicals not regulated by EPA, the state will decide whether to approve the changes. However, if a facility requests changes to a federal program, EPA will decide whether to approve the changes. If they are approved, EPA will decide on accommodating actions depending on the type of changes requested. In any case, EPA and DNR have agreed that any approved modifications written in cooperative agreements will replace those previously in effect and become the enforceable rules for those facilities.

Current Status of the Program

In addition to signing the agreement with EPA, since 1997 Wisconsin Act 27 was enacted in October 1997, DNR has:

- provided information about the program to facilities and the public through flyers and public speaking opportunities;
- received letters of intent to join the program from seven facilities; and
- organized a Cooperative Agreement Advisory Group to evaluate the program's success over the long term.

DNR's initial mail solicitation generated 49 requests for additional information on the pilot program, and DNR staff met with representatives from 11 facilities. Although DNR has not yet signed any cooperative environmental agreements, four of the seven facilities that have sent letters of intent also have submitted draft agreements. These facilities are:

- Packaging Corporation of America, of Tomahawk;
- Navistar International of Waukesha;
- Cook Composites and Polymers of Saukville; and
- Northern Engraving Corporation of Sparta.

The Kohler generator facility in Mosel had sent a letter of intent and a draft agreement to DNR. However, after receiving a formal response from DNR, it decided to withdraw from the program.

Draft agreements allow participating facilities to propose variances and operational flexibility from DNR. Requested variances include:

- reduced sampling frequency for wastewater discharges;
- a single permit that would cover all environmental emissions for the entire facility;

- fewer inspections upon implementation of a recognized environmental management system; and
- a facility-wide air pollution cap, which would allow a facility to construct or modify air emission sources within existing facilities without going through DNR's permit process.

Finally, the draft agreements describe how participating facilities will incorporate public input through interested persons groups, any steps they commit to make toward exceeding current environmental requirements, and how agreements will be enforced.

DNR has organized teams of regional and headquarters staff to develop counter-proposals for each of the draft agreements that it has received. DNR staff also met with Navistar officials in preparation for writing a counter-proposal to assess the types of pollutants that the facility's owners wish to address through the agreement and develop possible alternatives to accommodate the facility's requests. Because the facility is in an area of the state that does not meet EPA's overall air quality standards and the facility has decided to focus on air quality issues, DNR and Navistar met with EPA representatives to discuss whether EPA can provide flexibility to federal air quality regulations. While DNR expects that counter-proposals to Packaging Corporation of America, Cook Composites, and Northern Engraving will be relatively straightforward, it anticipates Navistar's counter-proposal will take longer to develop because of the facility's issues.

To evaluate the program's ongoing performance, DNR has organized a Cooperative Agreement Advisory Group, which consists of representatives from facilities that have submitted a letter of intent, EPA, the Department of Commerce, and business and environmental organizations. The advisory group has met three times since its formation, and is currently focusing on developing performance measures for the program. In addition, to increase the program's accessibility to the public and other facilities, DNR has all documents related to the program, including draft agreements and counter-proposals, available on its internet web site.

Statutes require DNR to try to attract facilities "of a variety of types, sizes, and locations" to the program; thus far, only larger facilities have expressed interest. DNR has been attempting to attract smaller facilities through discussions with consulting firms that act to ensure those facilities' environmental compliance and through other outreach activities. However, none have yet shown interest, apparently because in general they have fewer regulations to follow and fewer resources to commit to developing program requirements such as an environmental management system.

Future Considerations

According to its October 1999 report, DNR expects to have two cooperative agreements negotiated and signed, and to receive three additional draft agreements by the summer of 2000. By the end of 2000, DNR expects to have signed five cooperative agreements and to have received ten letters of intent to participate.

However, as of March 2000, DNR has not returned any counter-proposals or begun formal negotiations with any facilities that have submitted draft agreements, and it has missed deadlines it has set for itself in its last two reports. Therefore, it is possible that it will not reach all of its goals. The statutes state that DNR may not sign any agreements after October 1, 2002.
